

EXTRAORDINARY

भाग 11 - खण्ड 2 PART II - Section 2

प्राधिकार से प्रकाशित PUBLISHED BY AUTHORITY

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in Rajya Sabha on the 3rd December, 1999:—

I

BILL No. XLII of 1999

A Bill further to amend the Special Protection Group Act, 1988.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:--

- 1. (1) This Act may be called the Special Protection Group (Amendment) Act, 1999.

Short title and commencement.

(2) It shall be deemed to have come into force on the 18th day of November, 1999.

Amendment of section 4.

34 of 1988.

- 2. In section 4 of the Special Protection Group Act, 1988 (hereinafter referred to as the principal Act), for sub-section (1), the following sub-sections shall be substituted, namely:-
 - "(1) There shall be an armed force of the Union called the Special Protection Group for providing proximate security to-
 - (i) the Prime Minister and the members of his immediate family; and

- (ii) any former Prime Minister or to the members of his immediate family.—
 - (a) for a period of ten years from the date on which the former Prime Minister ceased to hold the office of the Prime Minister; and
 - (b) for any period beyond the period of ten years referred to in sub-clause (a) in a case where the level of threat faced by the former Prime Minister or by any member of his immediate family is of such a nature that such level of threat justifies the provision of proximate security to such former Prime Minister or such member of his immediate family, as the case may be:

Provided that, while assessing the level of threat, the Central Government shall take into account the following factors, namely:—

- (A) that the threat emanates from any militant or terrorist organisation; and
 - (B) that the threat is of a grave and continuing nature:

Provided further that the Central Government shall assess the level of threat periodically in such a manner that not more than twelve months shall elapse between two consecutive assessments.

- (IA) Notwithstanding anything contained in sub-section (1),-
- (a) any former Prime Minister or any member of the immediate family of the Prime Minister or of a former Prime Minister may decline proximate security;
- (b) where the proximate security is withdrawn from a former Prime Minister, whether before or after the commencement of the Special Protection Group (Amendment) Act, 1999, such proximate security shall also stand withdrawn from the immediate family members of such former Prime Minister:

Provided that where the level of threat faced by any member of the immediate family of a former Prime Minister warrants proximate security or any other security, such security shall be provided to that member.".

Repeal and saving.

3. (1) The Special Protection Group (Amendment) Ordinance, 1999, is hereby repealed.

Ord. 10 of 1999.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Special Protection Group Act, 1988 was enacted, inter alia, for providing proximate security to the Prime Minister and his immediate family members.

- 2. The aforesaid Act was amended by the Special Protection Group (Amendment) Act, 1991 so as to provide proximate security by the Special Protection Group to former Prime Ministers and the members of their immediate family for a period of five years from the date on which the former Prime Minister has ceased to hold the office of the Prime Minister. The Special Protection Group (Amendment) Act, 1991 also provided that any former Prime Minister or any member of the immediate family of the Prime Minister or of the former Prime Minister may decline such proximate security.
- 3. The Special Protection Group Act, 1988 was further amended in 1995 to extend the protection of the Special Protection Group to former Prime Ministers and their immediate family-members for a period of ten years instead of five years.
- 4. The Government have again considered the matter and have decided that the Special Protection Group Act, 1988 be further amended so as to provide proximate security to any former Prime Minister or to any member of the immediate family of such former Prime Minister beyond the period of ten years where the level of threat justifies such security.
- 5. It has also been decided that where the proximate security is withdrawn from former Prime Minister, such security shall also stand withdrawn from the immediate family members of such former Prime Minister. However, if the level of threat justifies continuation of Special Protection Group's security or alternative security, the same shall be provided by the Central Government.
- 6. As Parliament was not in session and the above mentioned amendments were required to be carried out immediately, the President promulgated the Special Protection Group (Amendment) Ordinance, 1999 (Ord. 10 of 1999) on the 18th November, 1999.
 - 7. The Bill seeks to replace the aforesaid Ordinance.

L. K. ADVANI.

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for amendment of section 4 of the Special Protection Group Act, 1988 so as to extend the cover of proximate security under the Special Protection Group Act or any other security, on the basis of level of threat, to former Prime Minister and their immediate family, members even beyond the period of ten years.

- 2. With the proposed amendment, it is not intended to create any new post and the existing personnel of the Special Protection Group or those manning alternate security will provide protection to former Prime Ministers and their immediate family members even beyond the period of ten years on the basis of level of threat faced by them.
- 3. In view thereof, the provisions of the Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of India.

Memorandum explaining the modification contained in the Bill to replace the Special Protection Group (Amendment) Ordinance, 1999

The Special Protection Group (Amendment) Bill, 1999, which seeks to replace the Special Protection Group (Amendment) Ordinance, 1999, proposes to make modification in clause 2 of the Bill to enable the immediate family members of the Prime Minister to decline proximate security.

2. The proposed modification seeks to clarify that the proximate security may be declined by immediate family members of the Prime Minister and is in accordance with the amendment made in section 4 of the Special Protection Group Act, 1988 by the Special Protection Group (Amendment) Act, 1991.

50 of 1968.

11

BILL No. XLIII of 1999

A Bill further to amend the Central Industrial Security Force Act, 1968, and to validate certain revision petitions disposed of under the rules made under the said Act.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Central Industrial Security Force (Amendment and Validation) Act, 1999.

Amendment of long title.

2. In the Central Industrial Security Force Act, 1968 (hereinafter referred to as the principal Act), for the long title, the following long title shall be substituted, namely:—

"An Act to provide for the constitution and regulation of an armed force of the Union for the better protection and security of industrial undertakings owned by the Central Government, certain other industrial undertakings, employees of all such undertakings and to provide technical consultancy services to industrial establishments in the private sector and for matters connected therewith."

3. In section 2 of the principal Act, in sub-section (I), after clause (c), the following clause shall be inserted, namely:—

Amendment of section 2.

l of 1956. 9 of 1932. '(ca) "industrial establishment" means an industrial undertaking or a company as defined under section 3 of the Companies Act, 1956 or a firm registered under section 59 of the Indian Partnership Act, 1932 which is engaged in any industry, or in any trade, business or service;'.

4. In section 3 of the principal Act, in sub-section (1), the words "and to perform such other duties as may be entrusted to it by the Central Government" shall be inserted at the end.

Amendment of section 3.

5. In section 8 of the principal Act,-

Amendment of section 8.

- (i) in clause (i), after the word "remove", the words ", order for compulsory retirement of shall be inserted;
- (ii) in clause (ii), after sub-clause (c), the following sub-clauses shall be inserted, namely:—
 - "(d) withholding of increment of pay with or without cumulative effect;
 - (e) withholding of promotion:
 - (f) censure.".

6. In section 9 of the principal Act,-

Amendment of section 9.

- (i) in sub-section (1), for the words, brackets and figure "subject to the provisions of sub-section (3)", the words, brackets, figures and letters "subject to the provisions of sub-section (2A), sub-section (2B) and sub-section (3)" shall be substituted;
 - (ii) after sub-section (2), the following sub-sections shall be inserted, namely:—
 - "(2A) Any enrolled member of the Force aggrieved by an order passed in appeal under sub-section (I) may, within a period of six months from the date on which the order is communicated to him, prefer a revision petition against the order to such authority as may be prescribed and in disposing of the revision petition, the said authority shall follow such procedure as may be prescribed.
 - (2B) The authority, as may be prescribed for the purpose of this subsection, on a revision petition preferred by an aggrieved enrolled member of the Force or suo moto, may call for, within a prescribed period, the records of any proceeding under section 8 or sub-section (2) or sub-section (2A) and such authority may, after making inquiry in the prescribed manner, and subject to the provisions of this Act, pass such order thereon as it thinks fit.";
- (iii) in sub-section (3), for the words, figures and brackets "under section 8 or under sub-section (2)", the words, figures, brackets and letters "under section 8, sub-section (2), sub-section (2A) or sub-section (2B)" shall be substituted.
- 7. In section 10 of the principal Act, after clause (e), the following clauses shall be inserted, namely:—

Amendment of section 10,

- "(f) to provide technical consultancy services relating to security of any private sector industrial establishments under section 14A;
- (g) to protect and safeguard the organisations owned or funded by the Government and the employees of such organisations as may be entrusted to him by the Central Government;
- (h) any other duty which may be entrusted to him by the Central Government from time to time.".

Insertion of new section 14A 8. After section 14 of the principal Act, the following section shall be inserted, namely:—

Technical Consultancy Service to industrial establishments.

- "14A. (1) Subject to any general directions which may be issued by the Central Government, it shall be lawful for the Director-General, on a request received from the Managing Director of an industrial establishment in the private sector or any other person authorised by him in this behalf, to direct the members of the Force to provide technical consultancy services relating to security, to such industrial establishments in such manner and on payment of such fee as may be prescribed.
- (2) The fee received under sub-section (1) shall be credited to the Consolidated Fund of India.

Explanation.—For the purposes of this section, the expression "Managing Director", in relation to an industrial establishment, means the person (whether called general manager, manager, chief executive officer or a partner of a firm or by any other name) who exercises control over the affairs of the establishment."

Amendment of section 22.

- 9. In section 22 of the principal Act, in sub-section (2),—
 - (i) after clause (ggg), the following clauses shall be inserted, namely:—

"(gggg) prescribing authority under sub-section (2A) of section 9 and the procedure to be followed by such authority in disposing of the revision petition;

(ggggg) prescribing authority under sub-section (2B) of section 9, the period within which such authority may call for the records and the manner in which such authority may make inquiry;";

- (ii) in clause (h), the word "and" occurring at the end shall be omitted;
- (iii) after clause (h), the following clause shall be inserted, namely:—

"(hh) the manner in which and the fee on payment of which the technical consultancy services shall be provided under sub-section (1) of section 14A; and".

Validation of the disposal of certain revision petitions. 10. Notwithstanding any judgment, decree or order of any court to the contrary, rule 49 of the Central Industrial Security Force Rules, 1969 published with the notification of the Government of India in the Ministry of Home Affairs number S.O. 4632, dated the 12th November, 1969 shall be deemed to be, and to have always been, made under the principal Act as amended by this Act as if the principal Act as so amended had been in force at all material times before the commencement of this Act and accordingly the disposal of any revision petition under the said rule 49 before the commencement of this Act or any order made or purporting to have been made or any action or thing taken or done in or under such petition shall not be deemed to be invalid or ever to have become invalid merely on the ground that the Central Government had no power under the principal Act to make the said rule 49.

STATEMENT OF OBJECTS AND REASONS

The Central Industrial Security Security Force (CISF) was raised under the Central Industrial Security Force Act, 1968 to provide protection and security to the Central Government Industrial Undertakings. At present, as per sub-section (1) of section 3 of the said Act, this Force can be deployed only in the Public Sector Industrial Undertakings. However, there are many other Government Organisations which are not strictly covered under the definition of industrial Undertaking but are of strategic importance to the nation. It is proposed to empower the Government to deploy the said Force also to perform other security duties. Accordingly sub-section (1) of section 3 of the said Act is being amended.

- 2. In the emerging secenario, private sector will play an increasing role in the economy of the country. The State will play the role of a regulator by creating a secure environment for free play of the economic forces. This will include the security of the industrial establishments. Over the years, CISF have achieved specialisation in the field of industrial security which can be used gainfully by providing consultancy services to the private sector to develop and strengthen their security network. Such consultancy services will be on full cost recovery basis. Therefore it is proposed to amend section 10 of the said Act and also to insert a new section 14A to empower the Force to perform such duties.
- 3. Section 8 of the Central Industrial Security Force Act, 1968 prescribes penalities that can be imposed on members of the Force. However, some recognised penalities like compulsory retirement, withholding of increment with or without cumulative effect, withholding of promotion and censure are being included in the said section to bring it in line with the provision of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.
- 4. Section 22 of the said Act empowers the Central Government to make rules for carrying out the purposes of the Act and, in particular, clause (g) of sub-section (2) of section 22 of the said Act empowers, the Central Government to make rules for regulating the punishments and prescribing authorities to whom appeals shall be preferred from orders of punishment or remission of fines or other penalties, and the procedure to be followed for the disposal of such appeals. In exercise of the said power, the Central Government has framed CISF Rules, 1969. Rule 49 of the said rules has been declared ultra-vires by the Orissa High Court in the matter of Sanatan Sahu Vs. Union of India. In the said case, the court observed that the Act specifically confers revisional powers on the Central Government and these powers cannot be delegated to a subordinate authority. Therefore, it is proposed to suitably amend sections 9 and 22 of the Central Industrial Security Force Act, 1968 for making provisions for filing of the revision petitions in disciplinary cases and for their consideration, suo moto or otherwise, by the next superior authority and to empower the Central Government to prescribe the procedure, time limit, competent authorities, etc. for disposal of the revision petitions. It is also proposed to validate all actions taken so far under the promisions of the existing rule 49 of the Central Industrial Security Force Rules, 1968.
 - 5. The Bill seeks to achieve the above objects.

L.K. ADVANI.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub clause (i) and sub-clause (ii) of clause 9 of the Bill seeks to insert clauses (gggg), clause (ggggg) and clause (hh) respectively in sub-section (2) of section 22 of the Central Industrial Security Force Act, 1968 to empower the Central Government to make rules for the following matters, namely:—

- (a) prescribing authority under sub-section (2A) of section 9 of the Act and the procedure to be followed by such authority in disposing of the revision petition;
- (b) precribing authority under sub-section (2B) of section 9 of the Act, the period within which such authority may call for the records and the manner in which such authority may make inquiry; and
- (c) to provide for the manner in which and the fee on payment of which the technical consultancy services shall be provided under sub-section (I) of section 14A of the Act.
- 2. These are matters of detail and could hardly be provided in the bill itself. The delegation of legislative power is, therefore, of a normal character.

Ш

BILL No. XLI of 1999

A Bill to provide for the registration and better protection of geographical indications relating to goods.

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

- 1. (1) This Act may be called the Geographical Indications of Goods (Registration and Protection) Act, 1999.
 - (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Short title, extent and commencement. Definitions and interpretation.

- 2. (1) In this Act, unless the context otherwise requires,—
- (a) "Appellate Board" means the Appellate Board established under section 83 of the Trade Marks Act, 1999;
- (b) "authorised user" means the authorised user of a geographical indication registered under section 17;
- (c) "deceptively similar" A geographical indication shall be deemed to be deceptively similar to another geographical indication if it so nearly resembles that other geographical indication as to be likely to deceive or cause confusion;
- (d) "district court" has the meaning assigned to it in the Code of Civil Procedure, 1908;

5 of 1908.

(e) "geographical indication", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

Explanation.—For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be;

- (f) "goods" means any agricultural, natural or manufactured goods or any goods of handicraft or of industry and includes food stuff;
- (g) "indication" includes any name, geographical or figurative representation or any combination of them conveying or suggesting the geographical origin of goods to which it applies;
 - (h) "name" includes any abbreviation of a name;
- (i) "package" includes any case, box, container, covering, folder, receptacle, vessel, casket, bottle, wrapper, label, band, ticket, reel, frame, capsule, cap, lid, stopper and cork;
 - (j) "prescribed" means prescribed by rules made under this Act;
 - (k) "producer", in relation to goods, means any person who,-
 - (i) if such goods are agricultural goods, produces the goods and includes the person who processes or packages such goods;
 - (ii) if such goods are natural goods, exploits the goods;
 - (iii) if such goods are handicraft or industrial goods, makes or manufactures the goods,

and includes any person who trades or deals in such production, exploitation, making or manufacturing, as the case may be, of the goods;

- (1) "register" means the Register of Geographical Indications referred to in section 6:
- (m) "registered" (with its grammatical variations) means registered under this Act;

- (n) "registered proprietor", in relation to a geographical indication, means any association of persons or of producer or any organisation for the time being entered in the register as proprietor of the geographical indication;
- (o) "Registrar" means the Registrar of Geographical Indications referred to in section 3:
- (p) "tribunal" means the Registrar or, as the case may be, the Appellate Board before which the proceeding concerned is pending.
- (2) Words and expressions used and not defined in this Act but defined in the Trade Marks Act, 1999 shall have the meanings respectively assigned to them in that Act.
 - (3) In this Act, unless the context otherwise requires, any reference—
 - (a) to the use of a geographical indication shall be construed as a reference to the use of a printed or other visual representation of the geographical indication;
 - (b) to the use of a geographical indication in relation to goods shall be construed as a reference to the use of the geographical indication upon, or in any physical or in any other relation whatsoever, to such goods;
 - (c) to a registered geographical indication shall be construed as including a reference to a geographical indication registered in the register;
 - (d) to the Registrar shall be construed as including a reference to any officer when discharging the functions of the Registrar in pursuance of sub-section (2) of section 3;
 - (e) to the Geographical Indications Registry shall be construed as including a reference to any office of the Geographical Indications Registry.

CHAPTER II

THE REGISTER AND CONDITIONS FOR REGISTRATION

3. (1) The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 3 of the Trade Marks Act, 1999, shall be the Registrar of Geographical Indications.

Registrar of Geographical Indications.

- (2) The Central Government may appoint such officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Registrar, such functions of the Registrar under this Act, as he may from time to time authorise them to discharge.
- 4. Without prejudice to the generality of the provisions of sub-section (2) of section 3, the Registrar may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under the said sub-section (2) and deal with such matter himself either de novo or from the stage it was so withdrawn or transfer the same to another officer so appointed who may, subject to special directions in the order of transfer, proceed with the matter either de novo or from the stage it was so transferred.

Power of Registrar to withdraw or transfer cases, etc

5. (1) For the purpose of this Act, there shall be established a Registry which shall be known as the Geographical Indications Registry.

Geographical Indications Registry and offices thereof.

(2) The head office of the Geographical Indications Registry shall be at such place as the Central Government may, by notification in the Official Gazette, specify, and for the purpose of facilitating the registrations of geographical indications, there may be established at such places as the Central Government may think fit branch offices of the Geographical Indications Registry.

- (3) The Central Government may, by notification in the Official Gazette, define the territorial limits within which an office of the Geographical Indications Registry may exercise its functions.
 - (4) There shall be a seal of the Geographical Indications Registry.

Register of Geographical Indications.

- 6. (1) For the purposes of this Act, a record called the Register of geographical indications shall be kept at the head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names, addresses and descriptions of authorised user and such other matters relating to registered geographical indications as may be prescribed and such registers may be maintained wholly or partly on computer.
- (2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Registrar to keep the records wholly or partly in computer floppies or diskettes or in any other electronic form, subject to such safeguards as may be prescribed.
- (3) Where such register is maintained wholly or partly in computer floppies or diskettes or in any other electronic form under sub-section (1), any reference in this Act to any entry in the register shall be construed as the reference to the entry as maintained on computer floppies or diskettes or in the other electronic form, as the case may be.
- (4) No notice of any trust, express or implied or constructive, shall be entered in the register and no such notice shall be receivable by the Registrar.
- (5) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Registrar.
- (6) There shall be kept at each branch office of the Geographical Indications Registry a copy of the register and such other documents mentioned in section 78 as the Central Government may, by notification in the Official Gazette, direct.

Part A and Part B of the register.

- 7. (1) The register referred to in section 6 shall be divided into two Parts called respectively Part A and Part B.
- (2) The particulars relating to the registration of the geographical indications shall be incorporated and form part of Part A of the register in the prescribed manner.
- (3) The particulars relating to the registration of the authorised users shall be incorporated and form part of Part B of the register in the prescribed manner.

Registration to be in respect of particular goods and area.

- 8. (1) A geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be.
- (2) The Registrar shall classify the goods under sub-section (1), as far as may be, in accordance with the International classification of goods for the purposes of registration of geographical indications.
- (3) The Registrar may publish in the prescribed manner an alphabetical index of classification of goods referred to in sub-section (2).
- (4) Any question arising as to the class within which any goods fall or the definite area as referred to in sub-section (I) in respect of which the geographical indication is to be registered or where any goods are not specified in the alphabetical index of goods published under sub-section (3) shall be determined by the Registrar whose decision in the matter shall be final.

Prohibition of registration of certain geographical indications.

- 9. A geographical indication-
 - (a) the use of which would be likely to deceive or cause confusion, or
 - (b) the use of which would be contrary to any law for the time being in force; or
 - (c) which comprises or contains scandalous or obscene matter; or
- (d) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or

- (c) which would otherwise be disentitled to protection in a court; or
- (f) which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or
- (g) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be,

shall not be registered as a geographical indication.

Explanation 1.—For the purposes of this section, "generic names or indications", in relation to goods, means the name of a goods which, although relates to the place or the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods.

Explanation 2.—In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods.

10. Subject to the provisions of section 7, a homonymous geographical indication may be registered under this Act, if the Registrar is satisfied, after considering the practical conditions under which the homonymous indication in question shall be differentiated from other homonymous indication and the need to ensure equitable treatment of the producers of the goods concerned, that the consumers of such goods shall not be confused or misled in consequence of such registration.

Registration of homonymous geographical indications.

CHAPTER III

PROCEDURE FOR AND DURATION OF REGISTRATION

11. (1) Any association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar in such form and in such manner and accompanied by such fees as may be prescribed for the registration of the geographical indication.

Application for registration.

- (2) The application under sub-section (1) shall contain—
- (a) a statement as to how the geographical indication serves to designate the goods as originating from the concerned territory of the country or region or locality in the country, as the case may be, in respect of specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing or preparation of which takes place in such territory, region or locality, as the case may be;
 - (b) the class of goods to which the geographical indication shall apply;
- (c) the geographical map of the territory of the country or region or locality in the country in which the goods orginate or are being manufactured;
- (d) the particulars regarding the apprearance of the geographical indication as to whether it is comprised of the words or figurative elements or both;
- (e) a statement containing such particulars of the producers of the concerned goods, if any, proposed to be initially registered with the registration of the geographical indication as may be prescribed; and
 - (f) such other particulars as may be prescribed.

- (3) A single application may be made for registration of a geographical indication for different classes of goods and fee payable therefor shall be in respect of each such class of goods.
- (4) Every application under sub-section (1) shall be filed in the office of the Geographical Indications Registry within whose territorial limits, the territory of the country or the region or locality in the country to which the geographical indication relates is situated:

Provided that where such territory, region or locality, as the case may be, is not situated in India, the application shall be filed in the office of the Geographical Indications Registry within whose territorial limit the place mentioned in the address for services in India as disclosed in the application, is situated.

- (5) Every application under sub-section (1) shall be examined by the Registrar in such manner as may be prescribed.
- (6) Subject to the provisions of this Act, the Registrar may refuse the application or may accept it absolutely or subject to such amendments, modification, conditions or limitations, if any, as he thinks fit.
- (7) In the case of refusal or conditional acceptance of application, the Registrar shall record in writing the grounds for such refusal or conditional acceptance and the materials used by him in arriving at his decision.

Withdrawal of acceptance.

- 12. Where, after the acceptance of an application for registration of a geographical indication but before its registration, the Registrar is satisfied,—
 - (a) that the application has been accepted in error, or
 - (b) that in the circumstances of the case the geographical indication should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted,

the Registrar may, after hearing the applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.

Advertisement of application.

- 13. (1) When an application for registration of a geographical indication has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as may be after acceptance, cause the application as accepted together with the condition or limitations, if any, subject to which it has been accepted, to be advertised in such manner as may be prescribed.
 - (2) Where after advertisement of an application—
 - (a) an error in the application has been corrected; or
 - (b) the application has been permitted to be amended under section 15,

the Registrar may in his discretion cause the application to be advertised again or instead of causing the application to be advertised again, notified in the prescribed manner, the correction made in the application.

Opposition to registration.

- 14. (1) Any person may, within three months from the date of advertisement or readvertisement of an application for registration or within such further period, not exceeding one month, in the aggregate, as the Registrar, on application made to him in such manner and on payment of such fee as may be prescribed allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.
- (2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall sent to the Registrar in the prescribed manner a counterstatement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

- (3) If the applicant sends such counter-statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.
- (4) Any evidence upon which the opponent and the applicant may rely shall be submitted in such manner and within such time as may be prescribed to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.
- (5) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.
- (6) Where a person giving notice of opposition or an applicant sending a counterstatement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceeding before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.
- (7) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter-statement on such terms as he thinks just.
- 15. The Registrar may, on such terms, as he thinks just, at any time, whether before or after acceptance of an application for registration under section 11, permit the correction of any error or in connection with the application or permit an amendment of the application:

Correction and amendment.

Provided that if an amendment is made to a single application referred to in subsection (3) of section 11 involving division of such application into two or more applications, the date of making of the initial application shall be deemed to be the date of making of the divided applications so divided.

16. (1) Subject to the provisions of section 12, when an application for registration of a geographical indication has been accepted and either—

Registration.

- (a) the application has not been opposed and the time for notice of opposition has expired; or
- (b) the application has been opposed and the opposition has been decided in favour of the applicant,

the Registrar shall, unless the Central Government otherwise directs, register the said geographical indication and the authorised users, if any, mentioned in the application and the geographical indication and the authorised users when registered shall be registered as of the date of the making of the said application and that date shall, subject to the provisions of section 83, be deemed to be the date of registration.

- (2) On the registration of a geographical indication, the Registrar shall issue each to the applicant and the authorised users, if registered with the geographical indication, a certificate in such form as may be prescribed of the registration thereof, sealed with the seal of the Geographical Indications Registry.
- (3) Where registration of a geographical indication is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice to the applicant in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.
- (4) The Registrar may amend the register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.
- 17. (1) Any person claiming to be the producer of the goods in respect of which a geographical indication has been registered under section 16 may apply in writing to the Registrar in the prescribed manner for registering him as an authorised user of such geographical indication.

Application for registration as authorised user.

- (2) The application under sub-section (1) shall be accompanied by a statement and such documents of facts as may be prescribed and required by the Registrar to determine as to whether such person is the producer of the goods referred to in that sub-section and such fee as may be prescribed.
 - (3) The provisions of this Chapter relating to-
 - (a) the filing and examination of the application;
 - (b) the refusal and acceptance of registration;
 - (c) withdrawal of acceptance of application;
 - (d) advertisement of application;
 - (e) opposition to registration;
 - (f) correction or error in an amendment of the application; and
 - (g) registration,

shall apply in respect of the application and registration of authorised users referred to in sub-section (1) in the same manner as they apply for the application for registration and registration of the geographical indication.

18. (1) The registration of a geographical indication shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of this

- (2) The registration of an authorised user shall be for a period of ten years or for the period till the date on which the registration of the geographical indication in respect of which the authorised user is registered expires, whichever is earlier.
- (3) The Registrar shall, on application made in the prescribed manner, by the registered proprietor or by the authorised user and within the prescribed period and subject to the payment of the prescribed fee, renew the registration of the geographical indication or authorised user, as the case may be, for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be (which date is in this section referred to as the expiration of the last registration).
- (4) At the prescribed time before the expiration of the last registration of a geographical indication or the authorised user, as the case may be, the Registrar shall send notice in the prescribed manner to the registered proprietor or the authorised user, as the case may be, of the date of expiration and the conditions as to payment of fees and otherwise upon which a renewal of registration may be obtained, and, if at the expiration of time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove the geographical indication or the authorised user, as the case may be, from the register:

Provided that the Registrar shall not remove the geographical indication or the authorised user, as the case may be, from the register, if an application is made in the prescribed form and the prescribed fee and surcharge is paid within six months from the expiration of the last registration of the geographical indication or the authorised user, as the case may be, and shall renew the registration of geographical indication or the authorised user, as the case may be, for a period of ten years under sub-section (3).

(5) Where a geographical indication or authorised user, as the case may be, has been removed from the register for non-payment of the prescribed fee, the Registrar shall, after six months and within one year from the expiration of the last registration of the geographical indication or the authorised user, as the case may be, on receipt of an application in the prescribed form and on payment of the prescribed fee, if satisfied that it is just so to do, restore the geographical indication or the authorised user, as the case

Duration, renewal, removal and restoration of registration.

section.

may be, to the register and renew registration of the geographical indication or authorised user, as the case may be, either generally or subject to such condition or limitation as he thinks fit to impose, for a period of ten years from the expiration of the last registration.

19. Where a geographical indication has been removed from the register for failure to pay the fee for renewal, it shall nevertheless, for the purpose of any application for the registration of another geographical indication during one year, next after the date of removal, be deemed to be a geographical indication already on the register, unless the tribunal is satisfied either—

Effect of removal from register for failure to pay fee for renewal.

- (a) that there has been no bona fide trade use of the geographical indication which has been removed within the two years immediately preceding its removal; or
- (b) that no deception or confusion would be likely to arise from the use of the geographical indication which is the subject of the application for registration by reason of any previous use of the geographical indication which has been removed.

CHAPTER IV

EFFECT OF REGISTRATION

- 20. (1) No person shall be entitled to institute any/proceeding to prevent, or to recover damages for, the infringement of an unregistered geographical indication.
- (2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.
- 21. (1) Subject to the other provisions of this Act, the registration of a geographical indication shall, if valid, give,—
 - (a) to the registered proprietor of the geographical indication and the authorised user or users thereof to obtain relief in respect of infringement of the geographical indication in the manner provided by this Act;
 - (b) to the authorised user thereof the exclusive right to the use of the geographical indication in relation to the goods in respect of which the geographical indication is registered.
- (2) The exclusive right to the use of a geographical indication given under clause (b) of sub-section (1) shall be subject to any condition and limitation to which the registration is subject.
- (3) Where two or more persons are authorised users of geographical indications, which are identical with or nearly resemble each other, the exclusive right to the use of any of those geographical indications shall not (except so far as their respective rights are subject to any conditions or limitations entered on the register) be deemed to have been acquired by anyone of those persons as against any other of those persons merely by registration of the geographical indications, but each of those persons has otherwise the same rights as against other persons as he would have if he were the sole authorised user.
- 22. (1) A registered geographical indication is infringed by a person who, not being an authorised user thereof,—
 - (a) uses such geographical indication by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which misleads the persons as to the geographical origin of such goods; or
 - (b) uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication.

No action for infringement of unregistered geographical indication.

Rights conferred by registration.

Infringement or registered geographical indications. Explanation 1.—For the purposes of this clause, "act of unfair competition" means any act of competition contrary to honest practices in industrial or commercial matters.

Explanation 2.—For the removal of doubts, it is hereby clarified that the following acts shall be deemed to be acts of unfair competition, namely:—

- (i) all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;
- (ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;
- (iii) geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods;
- (c) uses another geographical indication to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates.
- (2) The Central Government may, if it thinks necessary so to do for providing additional protection to certain goods or classes of goods under sub-section (3), by notification in the Official Gazette, specify such goods or class or classes of goods, for the purposes of such protection.
- (3) Any person who is not an authorised user of a geographical indication registered under this Act in respect of the goods or any class or classes of goods notified under subsection (2), uses any other geographical indication to such goods or class or classes of goods not originating in the place indicated by such other geographical indication or uses such other geographical indication to such goods or class or classes of goods even indicating the true origin of such goods or uses such other geographical indication to such goods or class or classes of goods in translation of the true place of origin or accompanied by expression such as "kind", "style", "imitation" or the like expression, shall infringe such registered geographical indication.
- (4) Notwithstanding anything contained in this section, where the goods in respect of which a geographical indication has been registered are lawfully acquired by a person other than the authorised user of such geographical indication, further dealings in those goods by such person including processing or packaging, shall not constitute an infringement of such geographical indication, except where the condition of goods is impaired after they have been put in the market.

Registration to be prima facie evidence of validity.

- 23. (1) In all legal proceedings relating to a geographical indication, the certificate of registration granted in this regard by the Registrar under this Act, being a copy of the entry in the register under the seal of the Geographical Indications Registry, shall be prima facie evidence of the validity thereof and be admissible in all courts and before the Appellate Board without further proof or production of the original.
- (2) Nothing in this section shall be deemed to be affect the right of action in respect of an unregistered geographical indication.

24. Notwithstanding anything contained in any law for the time being in force, any right to a registered geographical indication shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement:

Provided that on the death of an authorised user his right in a registered geographical indication shall devolve on his successor in title under the law for the time being in force.

Prohibition of assignment or transmission, etc.

CHAPTER V

SPECIAL PROVISIONS RELATING TO TRADE MARKS AND PRIOR USERS

25. Notwithstanding anything contained in the Trade Marks Act, 1999, the Registrar of Trade Marks referred to in section 3 of that Act, shall, suo motu or at the request of an interested party, refuse or invalidate the registration of a trade mark which—

Prohibition of registration of geographical indication as trade mark.

- (a) contains or consists of a geographical indication with respect to the goods or class or classes of goods not originating in the territory of a country, or a region or locality in that territory which such geographical indication indicates, if use of such geographical indications in the trade mark for such goods, is of such a nature as to confuse or mislead the persons as to the true place of origin of such goods or classes of goods;
- (b) contains or consists of a geographical indication identifying goods or class or classes of goods notified under sub-section (2) of section 22.
- 26. (1) Where a trade mark contains or consists of a geographical indication and has been applied for or registered in good faith under the law relating to trade marks for the time being in force, or where rights to such trade mark have been acquired through use in good faith either—

Protection to certain trade marks.

- (a) before the commencement of this Act; or
- (b) before the date of filing the application for registration of such geographical indication under this Act,

nothing contained in this Act shall prejudice the registrability or the validity of the registration of such trade mark under the law relating to the trade marks for the time being in force, or the right to use such trade mark, on the ground that such trade mark is identical with or similar to such geographical indication.

- (2) Nothing contained in this Act shall apply in respect of a geographical indication with respect to goods or classes of goods for which such geographical indication is identical with the term customary in common language as the common name of such goods in any part of India on or before the 1st day of January, 1995.
- (3) Nothing contained in this Act shall in any way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to confuse or mislead the people.
- (4) Notwithstanding anything contained in the Trade Marks Act, 1999 or in this Act, no action in connection with the use or registration of a trade mark shall be taken after the expiry of five years from the date on which such use or registration infringes any geographical indication registered under this Act has become known to the registered proprietor or authorised user registered in respect of such geographical indication under this Act or after the date of registration of the trade mark under the said Trade Marks Act subject to the condition that the trade mark has been published under the provisions of the said Trade Marks Act, 1999 or the rules made thereunder by that date, if such date is earlier than the date on which such infringement became known to such proprietor or authorised user and such geographical indication is not used or registered in bad faith.

CHAPTER VI

RECTIFICATION AND CORRECTION OF THE REGISTER

27. (1) On application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a geographical indication or authorised user on the ground of any contravention, or failure to observe the condition entered on the register in relation thereto.

Power to cancel or vary registration and te rectify the register.

- (2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the Appellate Board or to the Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit.
- (3) The tribunal may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.
- (4) The tribunal, of its own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).
- (5) Any order of the Appellate Board rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Correction of register.

- 28. The Registrar may, on application made in the prescribed manner by the registered proprietor or the authorised user,—
 - (a) correct any error in the name, address or description of the registered proprietor or the authorised user, as the case may be, of a geographical indication, or any other entry relating to the geographical indication on the register;
 - (b) enter any change in the name, address or description of the association of persons or of producers or any ogranisation or authority, as the case may be, who is registered as proprietor of a geographical indication on the register;
 - (c) cancel the entry of a geographical indication on the register;
 - (d) strike out any goods or classes of goods from those in respect of which a geographical indication is registered from the register.

and may make any consequential amendment or alteration in the certificate of registration, and for that purpose, may require the certificate of registration to be produced to him.

Alteration of registered geographical indications.

- 29. (1) The registered proprietor of a geographical indication may apply in the prescribed manner to the Registrar for leave to add to or alter the gerographical indication in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit
- (2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of the opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.
- (3) Where leave is granted under this section, the geographical indication as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).
- 30. (1) The Registrar shall not make any amendment of the register which would have the effect of adding any goods or classes of goods to those in respect of which a geographical indication is registered (whether in one or more classes) immediately before the amendment is to be made or antedating the registration of a geographical indication in respect of any goods:

Provided that this sub-section, shall not apply when the Registrar is satisfied that compliance therewith would involve complexity and that the addition or antedating, as

Adaptation of entries in register to amend or substitute classification of goods.

the case may be, would not affect any substantial quantity of goods and would not substantially prejudice the rights of any person.

(2) A proposal so to amend the register shall be brought to the notice of the registered proprietor and every authorised user of the geographical indication affected and advertised in the prescribed manner, and may be opposed before the Registrar by any person aggrieved on the ground that the proposed amendment contravenes the provisions of sub-section (1).

CHAPTER VII

APPEALS TO THE APPELLATE BOARD

31. (1) Any person aggrieved by an order or decision of the Registrar under this Act, or the rules made thereunder, may prefer an appeal to the Appellate Board within three months from the date on which the order or decision sought to be appealed against is communicated to such person preferring the appeal.

Appeals to the Appellate Board.

(2) No appeal shall be admitted if it is preferred after the expiry of the period specified under sub-section (1):

Provided that an appeal may be admitted after the expiry of the period specified therefor, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period.

- (3) An appeal to the Appellate Board shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and such fees as may be prescribed.
- 32. No court or other authority shall have or, be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-section (1) of section 31.

Bar of jurisdiction of courts, etc.

33. The provisions of sub-sections (2), (3), (4), (5), (6) of section 84, section 87, section 92, section 95 and section 96 of the Trade Marks Act, 1999, shall apply to the Appellate Board in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Trade Marks Act, 1999.

Procedure of the Appellate Board.

34. (1) An application for rectification of the register made to the Appellate Board under section 27 shall be in such form as may be prescribed.

Procedure for application for rectification, etc., before Appellate Board.

Appearance of

- (2) A certified copy of every order or judgment of the Appellate Board relating to a registered geographical indication under this Act shall be communicated to the Registrar by the Appellate Board and the Registrar shall give effect to the order of the Board and shall, when so directed, amend the entries in, or rectify, the register in accordance with such order.
 - 35. (1) The Registrar shall have the right to appear and be heard—

Registrar in relief legal estion proceedings.

- (a) in any legal proceedings before the Appellate Board in which the relief sought includes alteration or rectification of the register or in which any question relating to the practice of the Geographical Indications Registry is raised;
- (b) in any appeal to the Board from an order of the Registrar on an application for registration of a geographical indication or authorised user—
 - (i) which is not opposed, and the application is either refused by the Registrar or is accepted by him subject to any amendments, modifications, conditions or limitations, or
 - (ii) which has been opposed and the Registrar considers that his appearance is necessary in the public interest,

and the Registrar shall appear in any case if so directed by the Board.

(2) Unless the Appellate Board otherwise directs, the Registrar may, in lieu of appearing, submit a statement in writing signed by him, giving such particulars as he thinks proper of the proceedings before him relating to the matter in issue or of the grounds of any decision given by him affecting it, or of the practice of the Geographical Indications Registry in like cases, or of other matters relevant to the issues and within his knowledge as Registrar, and such statement shall be evidence in the proceeding.

Costs of Registrar in proceedings before Appellate Board.

Meaning of

geographical indications.

applying

36. In all proceedings under this Act before the Appellate Board the costs of the Registrar shall be in the discretion of the Board, but the Registrar shall not be ordered to pay the costs of any of the parties.

CHAPTER VIII

OFFENCES, PENALTIES AND PROCEDURE

- 37. (1) A person shall be deemed to apply a geographical indication to goods who—
 - (a) applies it to the goods themselves; or
- (b) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or
- (c) places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a geographical indication has been applied; or
- (d) uses a geographical indication in any manner reasonably likely to lead to the belief that the goods in connection with which it is used are designated or described by that geographical indication; or
- (e) in relation to the goods uses a geographical indication in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial documents and goods are delivered to a person in pursuance of a request or order made by reference to the geographical indication as so used.
- (2) A geographical indication shall be deemed to be applied to goods whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, the goods or to any package or other thing.

Falsifying and falsely applying geographical indications.

- 38. (1) A person shall be deemed to falsify a geographical indication who, either,—
- (a) without the assent of the authorised user of the geographical indication makes that geographical indication or deceptively similar geographical indication; or
- (b) falsifies any genuine geographical indication, whether by alteration, addition, effacement or otherwise.
- (2) A person shall be deemed to falsely apply to goods a geographical indication who, without the assent of the authorised user of the geographical indication,—
 - (a) applies such geographical indication or a deceptively similar geographical indication to goods or any package containing goods;
 - (b) uses any package bearing a geographical indication which is identical with or deceptively similar to the geographical indication of such authorised user, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the authorised user of the geographical indication.
- (3) Any geographical indication falsified as mentioned in sub-section (1) or falsely applied as mentioned in sub-section (2), is in this Act referred to as a false geographical indication.

Penalty

indications

applying false geographical

(4) In any prosecution for falsifying a geographical indication or falsely applying a geographical indication to goods, the burden of proving the assent of proprietor shall lie on the accused.

39. Any person who,---

- (a) falsifies any geographical indication; or
- (b) falsely applies to goods any geographical indication; or
- (c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication; or
- (d) applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 71, a false indication of such country, place, name or address; or
- (e) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 71; or
 - (f) causes any of the things above-mentioned in this section to be done,

shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

40. Any person who sells, lets for hire or exposes for sale, or hires or has in his possession for sale, goods or things to which any false geographical indication is applied or which, being required under section 71 to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer, or person for whom the goods are manufactured or without the indications so required, shall, unless he proves,—

Penalty for selling goods to which false geographical indication is applied.

- (a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the geographical indication or that any offence had been committed in respect of the goods; or
- (b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such goods or things; or
 - (c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

41. Whoever having already been convicted of an offence under section 39 or section 40 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Enhanced penalty on second or subsequent conviction.

Provided that the court may, for adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees:

Provided further that for the purposes of this section, no cognizance shall be taken of any conviction made before the commencement of this Act.

Penalty for falsely representing a geographical indication as registered.

- 42. (1) No person shall make any representation-
- (a) with respect to a geographical indication, not being a registered geographical indication, to the effect that it is a registered geographical indication; or
- (b) to the effect that a registered geographical indication is registered in respect of any goods in respect of which it is not in fact registered; or
- (c) to the effect that registration of a geographical indication gives an exclusive right to the use thereof in any circumstances in which having regard to limitation entered on the register, the registration does not in fact give that right.
- (2) If any person contravenes any of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.
- (3) For the purposes of this section the use in India in relation to a geographical indication of the words "registered geographical indication" or any other expression, symbol or sign like "R.G.I." referring whether expressly or impliedly to registration, shall be deemed to import a reference to registration in the register, except—
 - (a) where that word or other expression, symbol or sign is used in direct association with other words delineated in characters at least as large as those in which that word or other expression, symbol or sign is delineated and indicating that the reference to registration as a geographical indication under the law of a country outside India being a country under the law of which the registration referred to is in fact in force; or
 - (b) where that other expression, symbol or sign is of itself such as to indicate that the reference is to such registration as is mentioned in clause (a); or
 - (c) where that word is used in relation to a geographical indication registered under the law of a country outside India and in relation solely to goods to be exported to that country for use in that country.

43. If any person uses on his place of business, or on any document issued by him, or otherwise, words which would reasonably lead to the belief that his place of business is, or is officially connected with, the Geographical Indications Registry, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for improperly describing a place of business as connected with the Geographical Indications Registry.

Penalty for falsification of entries in the register. 44. If any person makes, or causes to be made, a false entry in the register, or a writing falsely purporting to be a copy of an entry in the register, or produces or tenders or causes to be produced or tendered, in evidence any such writing, knowing the entry or writing to be false, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

No offence in certain cases.

- 45. The provisions of sections 39, 40 and 41 shall in relation to a registered geographical indication or authorised user of such geographical indication, be subject to the rights created or recognised by this Act and no act or omission shall be deemed to be an offence under the aforesaid sections if,—
 - (a) the alleged offence relates to a registered geographical indication and the act or omission is permitted under this Act; and

- (b) the alleged offence relates to a registered geographical indication and the act or omission is permitted under any other law for the time being in force.
- 46. (1) Where a person is convicted of an offence under section 39 or section 40 or section 41 or is acquitted of an offence under section 39 or section 40 on proof that he acted without intend or defraud, or under section 40 on proof of the matters specified in clause (a) or clause (b) or clause (c) of that section, the court convicting or acquitting him may direct the forfeiture to Government of all goods and things by means of, or in relation to, which the offence has been committed, or but for such proof as aforesaid would have been committed.

Forfeiture of goods.

- (2) When a foreiture is directed on a conviction and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.
- (3) When, a forfeiture is directed on acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the court to which in appealable cases appeal lie from sentences of the court which directed the forfeiture.
- (4) When a forfeiture is directed on a conviction, the court, before whom the person is convicted, may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.
 - 47. Where a person accused of an offence under section 39 proves,—
 - (a) that in the ordinary course of his business he is employed on behalf of other persons to apply geographical indications, or as the case may be, to make dies, blocks, machines, plates, or other instruments for making, or being used in making, geographical indications;

Exemption of certain persons employed in ordinary course of business.

- (b) that in the case which is the subject of the charge he was so employed, and was not interested in the goods or other thing by way of profit or commission depend on the sale of such goods;
- (c) that, having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the geographical indication; and
- (d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the geographical indication was applied,

he shall be acquitted.

- 48. (1) Where the offence charged under section 39 or section 40 or section 41 is in relation to a registered geographical indication and the accused pleads that the registration of the geographical indication is invalid, the following procedure shall be followed:—
 - (a) if the court is satisfied that such defence is prima facie tenable, it shall not proceed with the charge but shall adjourn the proceeding for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Appellate Board under this Act, for the rectification of the register on the ground that the registration is invalid;
 - (b) if the accused proves to the court that he has made such application within the time so limited or within such further time as the court may for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification;
 - (c) if within a period of three months or within such extended time as may be allowed by the court the accused fails to apply to the Appellate Board for rectification of the register, the court shall proceed with the case as if the registration were invalid.

Procedure where invalidity of registration is pleaded by the accused. (2) Where before the institution of a complaint of an offence referred to in subsection (1), any application for the rectification of the register concerning the geographical indication in question on the ground of invalidity of the registration thereof has already been properly made to and is pending before the tribunal, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification in so far as the complainant relies upon the registration of his geographical indication.

Offences by companies.

49. (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
 - (b) "director", in relation to a firm, means a partner in the firm.
- 50. (1) No court shall take cognizance of an offence under section 42 or section 43 or section 44 except on complaint in writing made by the Registrar or any officer authorised by him in writing:

Provided that in relation to clause (b) of sub-section (1) of section 42, a court shall take a cognizance of an offence on the basis of a certificate issued by the Registrar to the effect that a registered geographical indication has been represented as registered in respect of any goods in respect of which it is not in fact registered.

- (2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try an offence under this Act.
 - (3) The offences under section 39 or section 40 or section 41 shall be cognizable.
- (4) Any police officer not below the rank of deputy superintendent of police or equivalent, may, if he satisfied that any of the offences referred to in sub-section (3) has been, is being, or is likely to be, committed, search and seize without warrant the goods, die, block, machine, plate, other instruments or things involved in committing the offence, wherever found, and all the articles so seized shall, as soon as practicable, be produced before the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be:

Provided that the police officer, before making any search and seizure, shall obtain the opinion of the Registrar on the facts involved in the offence relating to geographical indication and shall abide by the opinion so obtained.

(5) Any person having an interest in any article seized under sub-section (4), may, within fifteen days of such seizure, make an application to the Judicial Magistrate of the first class or Metropolitan Magistrate, as the case may be, for such article being restored to him and the Magistrate, after hearing the application and the prosecution, shall make such order on the application as he may deem fit.

Cognizance of certain offences and the powers of police officer for search and seizure.

51. In any prosecution under this Act, the court may order such costs to be paid by the accused to the complainant, or by the complainant to the accused, as the court deemed reasonable having regard to all the circumstances of the case and the conduct of the parties and the costs so awarded shall be recoverable as if they were a fine.

Costs of defence of prosecution.

52. No prosecution for an offence under this Act shall be commenced after the expiration of three years next after the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first happens.

Limitation of prosecution.

53. An officer of the Government whose duty it is to take part in the enforcement of the provisions of this Chapter shall not be compelled in any court to say whence he got any information as to the commission of any offence against this Act.

Information as to commission of offence.

54. If any person, being within India, abets the commission, without India, of any act which, if committed in India, would, under this Act, be an offence, he may be tried for such abetment in any place in India in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Punishment for abatement in India of acts done out of India

CHAPTER IX

MISCELLANEOUS

55. No suit or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

Protection of

56. Every person appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

- 57. (1) Where in any suit for infringement of a geographical indication the defendant pleads that registration of the geographical indication relating to plaintiff is invalid, the court trying the suit (hereinafter referred to as the court), shall,-
 - (a) if any proceedings for rectification of the register to the geographical indication relating to plaintiff or defendant are pending before the Registrar or the Appellate Board, stay the suit pending the final disposal of such proceedings;
 - (b) if no such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the geographical indication relating to plaintiff or defendant is prima facie tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.
- (2) If the party concerned proves to the court that he has made any such application as is referred to in clause (b) of sub-section (1) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.
- (3) If no such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the geographical indication concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.
- (4) The final order made in any rectification proceedings referred to in sub-section (1) or sub-section (2) shall be binding upon the parties and the court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the geographical indication.

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action taken in good faith.

Certain persons to be public servants.

Stav of proceedings where the validity of registration of geographical indication is questioned. etc.

(5) The stay of a suit for the infringement of a geographical indication under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction, directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit.

Application for rectification of register to be made to Appellate Board in certain cases.

- 58. (1) Where in a suit for infringement of a registered geographical indication the validity of the registration of the geographical indication relating to plaintiff is questioned by the defendant or where in any such suit the plaintiff questions the validity of the registration of the geographical indication relating to defendant, the issue as to the validity of the registration of the geographical indication concerned shall be determined only on an application for the rectification of the register and, notwithstanding anything contained in section 27, such application shall be made to the Appellate Board and not to the Registrar.
- (2) Subject to the provisions of sub-section (1), where an application for rectification of the register is made to the Registrar under section 27, the Registrar may, if he thinks fit, refer the application at any stage of the proceedings to the Appellate Board.

the contract for sale of any goods, the seller shall be deemed to warrant that the

geographical indication is a genuine geographical indication and not falsely applied,

unless the contrary is expressed in writing signed by or on behalf of the seller and

delivered at the time of the sale of goods on contract to and accepted by the buyer.

59. Where a geographical indication has been applied to the goods on sale or in

Implied warranty on sale of indicated goods.

Powers of

Registrar.

- 60. In all proceedings under this Act before the Registrar,---
- (a) the Registrar shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;
- (b) the Registrar may, subject to any rules made in this behalf under section 87, make such orders as to costs as he considers reasonable, and any such order shall be executable as a decree of a civil court;
- (c) the Registrar may, on an application made in the prescribed manner, review his own decision.

Exercise of discretionary power by Registrar. 61. Subject to the provisions of section 64, the Registrar shall not exercise any discretionary or other power vested in him by this Act or the rules made thereunder adversely to a person applying for the exercise of that power without (if so required by that person within the prescribed time) giving to the person an opportunity of being heard.

Evidence before Registrar. 62. In any proceeding under this Act before the Registrar, evidence shall be given by affidavit:

Provided that the Registrar may, if he thinks fit, take oral evidence in lieu of, or in addition to, such evidence by affidavit.

Death of party to a proceeding.

63. If a person who is a party to a proceeding under this Act (not being a proceeding before the Appellate Board or a court) dies pending the proceeding, the Registrar may, on request, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving parties, permit the proceeding to continue without the substitution of his successor in interest.

Extension of time.

64. (1) If the Registrar is satisifed, on application made to him in the prescribed manner and accompanied by the prescribed fee, that there is sufficient cause for extending the time for doing any act (not being a time expressly provided in the Act), whether the time so specified has expired or not, he may, subject to such conditions as he may think fit to impose, extend the time and inform the parties accordingly.

- (2) Nothing in sub-section (1) shall be deemed to require the Registrar to hear the parties before disposing of an application for extension of time, and no appeal shall lie from any order of the Registrar under this section.
- 65. Where, in the opinion of the Registrar, an applicant is in default in the prosecution of an application filed under this Act, the Registrar may, by notice require the applicant to remedy the default within a time specified and after giving him, if so, desired, an opportunity of being heard, treat the application as abandoned, unless the default is remedied within the time specified in the notice.

Abandonment.

Suit for infringement,

etc., to be instituted

before district court.

66. (1) No suit,-

- (a) for the infringement of a registered geographical indication; or
- (b) relating to any right in a registered geographical indication; or
- (c) for passing of arising out of the use by the defendant of any geographical indication which is indentical with or deceptively similar to the geographical indication relating to the plaintiff, whether registered or unregistered,

shall be instituted in any court inferior to a district court having jurisdiction to try the suit.

(2) For the purpose of clauses (s) and (b) of sub-section (1), a "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, include a distrct court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.

Explanation.—For the purposes of sub-section (2), "person" includes the registered proprietor and the authorised user.

67. (1) The relief which a court may grant in any suit for infringement or for passing off referred to in section 65 includes injunction (subject to such terms, if any, as the court thinks fit) and at the option of the plaintiff, either damages or account of profits, together with or without any order for the delivery—up of the infringing labels and indications for destruction or erasure.

Relief in suit for infringement or for passing off.

- (2) The order of injunction under sub-section (1) may include an ex parte injunction or any interlocutory order for any of the following matters, namely:—
 - (a) for discovery of documents;
 - (b) preserving of infringing goods, documents or other evidence which are related to the subject-matter of the suit;
 - (c) restraining the defendant from disposing of or dealing with his assets in a manner which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.
- (3) Notwithstanding anything contained in sub-section (1), the court shall not grant relief by way of damages (other than nominal damages) on account of profits in any case—
 - (a) where in a suit for infringement the defendant satisfies the court—
 - (i) that at the time he commenced to use the geographical indication complained of in the suit he was unaware and had no reasonable ground for believing that the geographical indication of the plaintiff was on the register; and

5 of 1908.

- (ii) that when he became aware of the existence and nature of the plaintiff's right in the geographical indication, he forthwith ceased to use the geographical indication in relation to good in respect of which it was registered; or
- (b) where in a suit for passing off, the defendant satisfies the court—
- (i) that at the time he commenced to use the geographical indication complained of in the suit he was unaware and had no reasonable ground for believing that the geographical indication relating to the plaintiff was in use; and
- (ii) that when he became aware of the existence and nature of the geographical indication relating to the plaintiff he forthwith ceased to use the geographical indication complained of.

Authorised user to be impleaded in certain proceedings.

- 68. (1) In every proceeding under Chapter VI or under section 31, every authorised user of a geographical indication to which such proceeding relate, who is not himself an applicant in respect of any proceeding under that Chapter or section, shall be made a party to the proceeding.
- (2) Notwithstanding anything contained in any other law, an authorised user so made a party to the proceeding shall not be liable for any costs unless he enters an appearance and takes part in the proceeding.

Evidence of entries in register, etc., and things done by the Registrar.

- 69. (1) A copy of any entry in the register or of any document referred to in subsection (1) of section 78 purporting to be certified by the Registrar and sealed with the seal of the Geographical Indications Registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.
- (2) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act or the rules to make or do shall be prima facie evidence of the entry having been made, and of the contents thereof, or of the matter or things having been done or not done.

Registrar and other officers not compellable to produce register, etc. 70. The Registrar or any officer of the Geographical Indications Registry shall not, in any legal proceedings to which he is not a party, be compellable to produce the register or any other document in his custody, the contents of which can be proved by the production of a certified copy issued under this Act or to appear as a witness to prove the matters therein recorded unless by order of the court made for special cause.

Power to require goods to show indication of origin.

- 71. (1) The Central Government may, by notification in the Official Gazette, require that goods of any class specified in the notification which are made or produced beyond the limits of India and imported into India, or, which are made or produced within the limits of India, shall, from such date as may be appointed by the notification not being less than three months from its issue, have applied to them an indication of the country or place in which they were made or produced, or of the name and address of the manufacturer or the person for whom the goods were manufactured.
- (2) The notification may specify the manner in which such indication shall be applied, that is to say, whether to goods themselves or in any other manner, and the times or occasions on which the presence of the indication shall be necessary, that is to say, whether on importation only, or also at the time of sale, whether by wholesale or retail or both.
- (3) No notification under this section shall be issued, unless application is made for its issue by persons or associations substantially representing the interests of dealers in, or manufacturers, producers, or users of, the goods concerned, or unless the Central Government is otherwise convinced that it is necessary in the public interest to issue the notification, with or without such inquiry, as the Central Government may consider necessary.

10 of 1897.

- (4) The provisions of section 23 of the General Clauses Act, 1897 shall apply to the issue of a notification under this section as they apply to the making of a rule or bye-law the making of which is subject to the condition of previous publication.
- (5) A notification under this section shall not apply to goods made or produced beyond the limits of India and imported into India, if in respect of those goods, the Commissioner of Customs is satisfied at the time of importation that they are intended for exportation whether after transhipment in or transit through India or otherwise.
- 72. If in any legal proceedings for rectification of the register before the Appellate Board a decision is on contest given in favour of the registered proprietor or, as the case may be, authorised user of the geographical indication on the issue as to the validity of the registration of the geographical indication or the authorised user, the Appellate Board may grant a certificate to that effect, and if such a certificate is granted, then, in any subsequent legal proceeding in which the said validity comes into question the said proprietor or the authorised user, as the case may be, on obtaining a final order or judgment in his favour affirming validity of the registration of the geographical indication or the authorised user, as the case may be, shall unless the said final order or judgment for sufficient reason directs otherwise, be entitled to his full cost charges and expenses as between legal practitioner and client.

Certificate of validity.

73. (1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding for infringement of a geographical indication which is registered, or alleged by the first-mentioned person to be registered, or with some other like proceeding, a person aggrieved may, whether the person making the threats is or is not the registered proprietor or the authorised user of the geographical indication, bring a suit against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the court that the geographical indication is registered and that the acts in respect of which the proceedings were threatened, constitute, or, if done, would constitute, an infringement of the geographical indication.

Groundless threats of legal proceedings,

- (2) The last preceding sub-section does not apply if the registered proprietor of the geographical indication or an authorised user thereof with due diligence commences and prosecutes an action against the person threatened for infringement of the geographical indication.
- (3) Nothing in this section shall render a legal practitioner or a registered geographical indications agent liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.
- (4) A suit under sub-section (1) shall not be instituted in any court inferior to a district court.
- 74. An address for service stated in an application or notice of opposition shall, for the purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case may be, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them by post to the address for service of the applicant or opponent, as the case may be.

Address for

75. In any proceeding relating to a geographical indication, the tribunal shall admit evidence of the usages of the trade concerned and of any relevant geographical indication legitimately used by other persons.

Trade usages, etc., to be taken into consideration.

- 76. Where, by or under this Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is,—
- Agenta.

- (b) a person registered in the prescribed manner as a geographical indications agent, or
 - (c) a person in the sole and regular employment of the principal.

Indexes.

- 77. There shall be kept under the directions and supervision of the Registrar,—
 - (a) an index of registered geographical indications,
- (b) an index of geographical indications in respect of which applications for registration are pending.
- (c) an index of the names of the proprietors of registered geographical indications, and
 - (d) an index of the names of authorised users.

Documents open to public inspection.

- 78. (1) The following documents, subject to such conditions as may be prescribed, be open to public inspection at the Geographical Indications Registry, namely:—
 - (a) the register and any document upon which any entry in the register is based;
 - (b) every notice of opposition to the registration of a geographical indication, application for rectification before the Registrar, counter-statement thereto, and any affidavit or document filed by the parties in any proceedings before the Registrar;
 - (c) the indexes mentioned in section 77; and
 - (d) such other documents as the Central Government may, by notification in the Official Gazette, specify:

Provided that where such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer print out of the relevant entry in the register so maintained on computer.

(2) Any person may, on an application to the Registrar and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the register or any document referred to in sub-section (1).

Reports of Registrar to be placed before Parliament. 79. The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution by or under this Act.

Fees and surcharge.

- 80. (1) There shall be paid in respect of applications and registrations and other matters under this Act such fees and surcharge as may be prescribed by the Central Government.
- (2) Where a fee is payable in respect of the doing of an act by the Registrar, the Registrar shall not do that act until the fee has been paid.
- (3) Where a fee is payable in respect of the filing of a document at the Geographical Indications Registry, the document shall be deemed not to have been filed at the registry until the fee has been paid.

Savings in respect of certain matters in Chapter VIII.

- 81. Nothing in Chapter VIII shall-
- (a) exempt any person from any suit or other proceeding which might, but for anything in that Chapter, be brought against him, or
- (b) be construed so as to render liable to any prosecution or punishment any servant of a master resident in India who in good faith acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

16 to 1908.

82. Notwithstanding anything contained in the Registration Act, 1908, no document declaring or purporting to declare any title of a person to a geographical indication other than a registered geographical indication shall be registered under that Act.

Declarations as to title of geographical indication not registrable under the Registration Act, 1908.

83. The provisions of this Act shall be binding on the Government.

Government to be bound.

84. (1) With a view to the fulfilment of a treaty, convention or arrangement with any country or a country which is a member of a group of countries or union of countries or Inter-Governmental Organisations outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country or group of countries or union of countries or Inter-Governmental Organisations to be a convention country or convention countries for the purposes of this Act.

Special provisions relating to applications for registration from citizens of convention countries.

- (2) Nothing contained in this Act or the Trade Marks Act, 1999 shall prevent a continued and similar use of geographical indication relating to a country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisations, as the case may be, notified under sub-section (1) identifying wines or spirits in connection with goods by any citizen or domiciliary of such country who has used that geographical indication in continuous manner with regard to such goods or any goods relating to such goods, as the case may be, in any part of the territory of that country either—
 - (a) for at least ten years preceding the 15th day of April, 1994; or
 - (b) in good faith preceding the date referred to in clause (a).
- 85. Where any country or a country which is a member of a group of countries or union of countries or any Inter-Governmental Organisation specified by the Central Government in this behalf by notification in the Official Gazette does not accord to citizens of India the same rights in respect of the registration and protection of geographical indications as it accords to its own nationals, no nationals of such country or a country which is a member of a group of countries or union or countries or Inter-Governmental Organisations as the case may be, shall be entitled—

Provision as to reciprocity.

- (a) to apply for the registration of, or be registered as the proprietor of geographical indication;
- (b) to apply for registration or be registered as an authorised user of a geographical indication.
- 86. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Powers of Central Government to remove difficulties.

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.
- 87. (1) The Central Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the provisions of this Act.

Power to make rules.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) the matters to be included in the Register of Geographical Indications under sub-section (1), and the safeguards to be observed in the maintenance of such register in computer floppies or diskettes under sub-section (2) of section 6;
 - (b) the manner of incorporation of particulars relating to registration of geographical indications in Part A under sub-section (2) and the manner of incorporation of particulars relating to the registration of the authorised users under sub-section (3) of section 7;
 - (c) the classification of goods and the manner of publication of the alphabetical index of classification of goods and the definite territory or locality or region for the purpose of registration of geographical indications under subsection (1) of section 8;
 - (d) the form in which and the manner in which an application for registration of a geographical indication may be made and the fees which may accompany the application under sub-section (1) and the particulars to be made in the statement of producers of goods who proposes to be initially registered with the registration under clause (f) of sub-section (2) of section 11;
 - (e) the manner of publication of advertisement of accepted application, for registration of geographical indications, etc., under sub-section (1), and the manner of notifying the corrections or amendments made in the application under sub-section (2) of section 13;
 - (f) the manner in which and the fee which may accompany an application and the manner of giving notice under sub-section (I) and the manner of sending counter statement under sub-section (2) and the manner of submission of evidence and the time therefor under sub-section (4) of section 14;
 - (g) the form of certificate of registration under sub-section (2) and the manner of giving notice to the applicant under sub-section (3) of section 16;
 - (h) the manner of applying for registration as an authorised user under sub-section (1) and the manner of submitting statements and documents along with such application and the fee which may accompany such application under sub-section (2) of section 17;
 - (i) the manner of making application, the time within which such application is to be made and the fee payable with each application, under sub-section (3) and the time within which the Registrar shall send notice and the manner of such notice under sub-section (4) and the form in which and the fee which may accompany an application for renewal to be made under sub-section (5) of section 18;
 - (j) the manner of making applications under sub-sections (1) and (2), the manner of giving notice under sub-section (4) and the manner of service of notice of rectification under sub-section (5) of section 27;
 - (k) the manner of making an application for correction, etc., under section 28;
 - (1) the manner of making an application under sub-section (1), the manner of advertising an application under sub-section (1), the time and manner of notice by which an application may be opposed under sub-sections (2) and (3) of section 29;
 - (m) the manner of advertisement under sub-section (2) of section 30;
 - (n) the form of making an appeal, the manner of verfication and the fee payable under sub-section (3) of section 31;

- (o) the form in which an application for rectification shall be made, under sub-section (1) of section 34;
- (p) the manner of making an application for review under clause (c) of section 60;
- (q) the time within which an application is to be made to the Registrar for exercising his discretionary power under section 61;
- (r) the manner of making an application and the fee payable therefor under sub-section (1) of section 64;
- (s) the manner of authorising any person to act and the manner of registration of a geographical indications agent under section 76;
- (f) the fee and surcharge payable for applications and registrations and other matters under sub-section (1) of section 80;
 - (u) any other matter which is required to be, or may be, prescribed.
- (3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediatly following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

At present there is no specific law governing geographical indications of goods in the country which could adequately protect the interests of producers of such goods. Exclusion of unauthorized persons from misusing geographical indications would serve to protect consumers from deception, add to the economic prosperity of the producers of such goods and also promote goods bearing Indian geographical indications in the export market. Unless a geographical indication is protected in the country of its origin, there is no obligation under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) for other countries to extend reciprocal protection. India would, on the other hand, be required to extend protection to goods imported from other countries which provide for such protection. In view of the above circumstances, it is considered necessary to have a comprehensive legislation for registration and for providing adequate protection for geographical indications. Hence the Bill.

2. The Bill has the following salient features:-

- (a) definitions of several important terms like "geographical indication", "goods", "producers", "package", "registered proprietor", "authorized user", etc.:
 - (b) provision for the establishment of a Geographical Indications Registry;
- (c) provisions for the maintenance of a Register of Geographical Indications in two Parts—Part A and Part B and use of computers, etc., for maintenance of such registers. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users;
 - (d) registration of geographical indications of goods in specified classes;
 - (e) prohibition of registration of certain geographical indications;
- (f) provisions for framing of rules by Central Government for filing of application, its contents and matters relating to substantive examination of geographical indication applications;
- (g) compulsory advertisement of all accepted geographical indication applications and for inviting objections;
- (h) registration of authorized users of registered geographical indications and providing infringement action either by a registered proprietor or an authorized user;
- (i) provisions for the renewal, rectification and restoration of geographical indications and authorized user;
 - (j) provisions for higher level of protection for notified goods;
- (k) prohibition of assignment, etc., of a geographical indication as it is a public property;
 - (1) prohibition of registration of geographical indication as a trade mark;
- (m) appeal against Registrar's decisions would lie to the Intellectual Property Appellate Board established under the Trade Marks legislation;
 - (n) provision relating to offences and penalties;

- (o) provision detailing the effects of registration and the rights conferred by registration;
- (p) provisions for reciprocity, powers of the Registrar, maintenance of index, protection of homonymous geographical indications, etc.
- 3. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions of the Bill.

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Notes on clauses

Clause 1.—This clause gives the short title of the Bill, the area of its operation and the date of commencement of the Act and its various provisions. As adequate steps have to be taken for administering the provisions of the proposed legislation, provision has been made to bring different provisions of the Act on different dates.

Clause 2.—This clause contains definitions and interpretation. The definitions "Appellate Board", "authorized users", "deceptively similar", "geographical indication", "name", "goods", "indication", "package", "producers", "register", "registered proprietor", "Registrar" and "Tribunal", etc., have been provided. The concept of a statutory protection for geographical indications being new in India it is necessary to define the same and other associated expressions including "authorized users", "registered proprietors", and "producers". Only an authorized user of a registered geographical indication can use that geographical indication on the goods. However, infringement action can be initiated both by the registered proprietor and the authorized user.

Clause 3.—This clause provides for the appointment of a Registrar of Geographical Indications and other subordinate officers. The Controller General of Patents, Designs and Trade Marks as may be appointed under sub-section (1) of section 3 of the proposed new trade marks legislation (which will be enacted as the Trade Marks Act, 1999) shall be the Registrar of Geographical Indications who will be assisted by necessary additional officers and staff in the work relating to administration of the proposed legislation.

Clause 4.—This clause seeks to empower the Registrar to withdraw any matter pending before an officer by a written order and deal with such matter himself or transfer the same to another officer for reasons to be recorded therein. This provision is similar to section 4 of the Trade and Merchandise Marks Act, 1958 which is proposed to be retained under the Trade Marks Act, 1999. The purpose of this clause is to ensure better management of the work in the Geographical Indications Registry and in the administration of the Act.

Clause 5.—This clause deals with the establishment of the Geographical Indications Registry and branch offices. It corresponds to similar provisions under the Trade Marks Act, 1999. The clause also provides for a seal of the Geographical Indications Registry.

Clause 6.—This clause provides for a record to be called the Register of Geographical Indications which would be maintained at the Head Office and all branch offices wherein specified material particulars would be entered. The clause also provides for maintenance of the register on the computer or in any other electronic form. It further provides that the Register shall be kept under the control and management of the Registrar subject to the superintendence and directions of the Central Government. A copy of register and such other notified documents mentioned in clause 77 shall be maintained at each of the Branch Offices Provision has also been made to enable maintenance of register and other records in computer floppies or diskettes or in any other electronic form subject to such safeguards as may be prescribed in the rules.

Clause 7.—This clause provides for the division of the Register of Geographical Indications into two parts, namely, Part A and Part B. In Part A of the register relevant particulars of Registered Geographical Indications would be entered and in Part B the details of authorized users would be maintained in the manner as may be prescribed in the rules.

Clause 8.—Sub-clause (1) of clause 8 provides that a geographical indication may be registered in respect of any or all the goods comprised in a prescribed class of goods and in respect of a definite territory of a country or a region or locality, as the case may be, sub-clause (2) provides that the classification shall, as far as possible, conform to the international classification of goods. Sub-clause (5) provides that where any question arises regarding classification of goods or the determination of the definite area it shall be determined by the Registrar whose decision in the matter shall be final.

Clause 9.— This clause prohibits the registration of certain geographical indications. Sub-clause (a) prohibits, in general terms, the registration of a geographical indication the

use of which is likely to deceive or cause confusion. This clause safeguards the free operation of normal trade channels from interference so far as it seeks to protect registered geographical indications and is incorporated for the benefit of other traders as also the public at large. Confusion regarding geographical indication may be visual or phonetic in nature, i.e. contextual confusion or as to trade origin. The purchasers should not be deceived or induced to believe that the goods sold under the geographical indication emanates from the same trade source. Sub-clause (b) seeks to prohibit the registration of geographical indications which are contrary to any law for the time being in force. Where producers apply for registration of geographical indications which are used in contravention of the provisions of any existing statute, the application shall be refused. Sub-clause (c) seeks to prohibit registration of geographical indications that consist or contain scandalous or obscene matter. Sub-clause (d) prohibits registration of geographical indications, which are likely to hurt the religious feeling of any class or section of citizens of India. Subclause (e) prohibits registration of geographical indication that would otherwise be disentitled to protection in a court. Sub-clause (f) prohibits registration of a geographical indication that have become generic, indications that have ceased to be protected in the country of origin or have fallen into disuse in that country. Sub-clause (g) prohibits registration of geographical indications which falsely represent to persons that the goods originate in a locality although literally true as to the territory, region or locality of its origin.

Explanation 1 to clause 9 explains what is meant by generic names or indications and Explanation 2 details the factors to be taken into account in determining whether the name has become generic or not.

Clause 10.— This clause provides for the registration of homonymous geographical indications. This refers to similar geographical indications. The Registrar in that case would have to consider the practical question to differentiate the two homonymous indications and avoid confusion in the market.

Clause 11.—This clause stipulates eligibilty regarding filing of applications for registration of geographical indication. Generally the apex bodies dealing with particular goods like the Coffee Board, Tea Board, Spices Board, etc., which look after the interests of the producers of such goods as also the trade concerned would initiate the original application. Therefore, provision is made for any association of persons or of producers or any organization or authority representing the interest of the producers of the goods to file an application for registration of a geographical indication. Sub-clause (2) provides the requirements of making such an application. Sub-clause (3) provides for the filing of a single application for different classes of goods. This will reduce paper work and expedite processing of applications. Sub-clause (4) provides that an application for the registration of a geographical indication shall be filed at the appropriate office of Geographical Indications Registry. Sub-clause (5) empowers the Registrar to refuse or accept the application either absolutely or subject to such amendment or modifications, conditions or limitations as may be required. Sub-clause (6) provides that where an application is refused or accepted with conditions, the Registrar shall record in writing the reasons thereof and the material used by him to arrive at his decision.

Clause 12.—This clause provides for withdrawal of acceptance of an application for registration of a geographical indication, if it has been accepted in error or other circumstances after giving an opportunity to the applicant to be heard in the matter.

Clause 13.—This clause provides that where an application has been accepted, the Registrar shall cause the same to be advertised in such manner as may be laid down in the rules detailing material particulars of the application. The Registrar has been vested with the power to re-advertise an application when an error is noticed after advertisement under sub-clause (2).

Clause 14.—This clause provides that any person may, within three months from the date of advertisement or re-advertisement of an application for registration or within such further period not exceeding one month in the aggregate, file a notice of opposition in writing to the Registrar. The Registrar shall serve a copy of the notice so received on the applicant and if within two months from the receipt by the applicant, he does not file a counter statement of the grounds on which he relies in support of the application, the application shall be deemed to have been abandoned. If the applicant, he sends a counter statement, the Registrar shall serve a copy of it on the person giving notice of opposition. Thereafter, the Registrar would dispose of the matter providing an opportunity of hearing to the parties and considering the materials on record and the evidences.

Clause 15.—This clause empowers the Registrar to carry out correction of any error and amendments in an application whether before or after acceptance, if any errors are found in the application.

Clause 16.—This clause provides that when an application has been accepted unopposed after advertisement or has been opposed but decided in favour of the applicant, the Registrar shall, unless the Central Government directs otherwise, register the geographical indication and the authorized user, if any, mentioned in the application. When a geographical indication is registered, the date of filing of the application shall be the date of registration. Sub-clause (2) provides that the Registrar shall issue to each of the applicants and the authorized user a certificate in prescribed form with the seal of the Geographical Indications Registry. Sub-caluse (3) provides that where the registration of a geographical indication is not completed within twelve months from the date of the application by reasons of the applicant's defaults, the Registrar may after giving notice in the prescribed manner treat the application as abandoned unless it is completed within the time specified in the notice. Sub-clause (4) empowers the Registrar to amend the register or the certificate of registration to carry out corrections of a clerical error or an obvious mistake.

Clause 17.—This clause provides that any person claiming to be the producer of the goods in respect of which a geographical indication has been registered under clause 16, may apply to the Registrar for registering him as an authorized user of such geographical indication. The procedure relating to registering an authorized user of a registered geographical indication would be similar to the procedure for the registration of a geographical indication. The manner of making the application, statement and documents which shall accompany the application and the fee payable shall be prescribed by rules.

Clause 18.—This clause provides for the registration of a geographical indication and the validity of registration of an authorized user for a period of ten years. Both the registrations may be renewed from time to time. However, if the renewal is not effected within the prescribed or extended time, the geographical indication or the authorized user, as the case may be, is liable to be removed from the records. Provision is also made under this clause for the restoration of registration under certain circumstances.

Clause 19.—This clause provides for the consequences of removal of a registered geographical indication for the failure to pay the prescribed renewal fee.

Clause 20.—This clause provides that no person shall be entitled to institute any proceeding to prevent or recover damages for the infringement of an unregistered geographical indication. This clause only forbids the institution of proceedings for injunctions or for damages. Sub-clause (2) provides that nothing in the proposed legislation shall be deemed to affect the right of action against any person for passing off goods as the goods of another person. This is a common law action for deception which is expressly saved by the Bill.

Clause 21.—This clause provides for the rights conferred by registration of a geographical indication. Once registered, a geographical indication shall, if valid, give both to the registered proprietor and all authorized users whose names have been entered in Part A and in Part B of the register, the right to obtain relief in respect of infringement of the geographical indication in the manner provided by this Bill. However, authorized

users alone shall have the exclusive right to the use of the geographical indication in relation to the goods in respect of which the geographical indication is registered. However, this right is subject to the conditions and limitations to which the registration is subject. Further sub-clause (3) provides that two or more authorised users of a registered geographical indication shall have co-equal rights.

Clause 22.—This clause deals with infringement of registered geographical indications. A registered geographical indication is infringed by a person who, not being the registered proprietor or an authorized user, uses such an indication on the goods or suggests that such goods originate in some other geographical area other than the true place of origin of the goods which misleads the public. Sub-clause (b) provides that a geographical indication is also infringed by any use that constitutes an act of unfair competition which term is elaborated in Explanations 1 and 2. Sub-clause (iii) to Explanation 2, for instance, states that a geographical indication the use of which in the course of trade is liable to mislead the public as to the nature, manufacturing process, the characteristics, suitability or quantities of the goods would also constitute an infringement. Sub-clause (c) states that a registered geographical indication is infringed by a person who, not being the registered proprietor or an authorized user, uses another geographical indication to the goods which although literally true as to the territory, region or locality in which the goods originate, falsely represent to the public that the goods originate in the region, territory or locality in respect of which such registered geographical indication relates. Sub-clause (2) of this clause provides that the Central Government may by notification in the Official Gazette provide for a higher level of protection for certain goods or classes of goods which are notified. Under Article 23.1 of the Agreement on Trade Related Intellectual Property Rights (TRIPS), India is obligated to prevent the use of a geographical indication that identifies wines or spirits not originated in the place indicated by the geographical indication, even where the true place of origin of the goods is indicated or where the geographical indication is used in translation or accompanied by expression such as "kind", "type", "style", "imitation" or the like. Sub-clause (3) seeks to extend this concept to not merely wines but also to goods of national interest on a case to case basis. Sub-clause (4) provides that once a geographical indication is lawfully acquired further dealing in such goods shall not constitute an infringement unless the goods are impaired after they have been put in the market.

Clause 23.—Sub-clause (1) of this clause provides that a geographical indication once registered shall prima facie be evidence of the validity of the registration and the certificate of registration shall be admissible in all courts and before the Appellate Board without further proof or production of the original. Sub-slause (2) provides that nothing in the said clause shall be deemed to affect the right of action in respect of an unregistered geographical indication.

Clause 24.— As a geographical indication is a public property, once registered, this clause prohibits any assignment, licensing, mortgaging, etc., of such geographical indication. However, on the death of an authorized user his successor in title can be brought on record.

Clause 25.—This clause prohibits the registration of a geographical indication as a trade mark or invalidates any geographical indication registered as a trade mark as it would lead to expropriation of a public property by an individual leading to confusion in the market.

Clause 26.—This clause protects a trade mark which contains or consists of a geographical indication which has been applied for or registered in good faith under the trade marks law or where such trade marks have been used in good faith before the commencement of the proposed legislation or before the date of filing of an application for registration of a geographical indication. Sub-clause (2) states that this Act shall not

apply to geographical indication with respect to goods or class or classes of goods which have become the common name of such goods in India on or before 1st January, 1995. Sub-clause (3) protects the right of any person to use his name or the name of his predecessor in business except where such name is liable to cause confusion or mislead the public. Sub-clause (4) provides that no action in connection with the use of registration of a trade mark shall be taken after five years from the date from which such use or registration which infringes any geographical indication registered under this Act has become known to the registered proprietor or the authorized user.

Clause 27.—This clause empowers the Registrar or the Appellate Board to cancel or vary the registration of a geographical indication or of an authorized user for the contravention or failure to observe the conditions entered on the Register. Sub-clause (2) enables any person aggrieved by the absence or omission of any entry in the register without sufficient cause or any entry wrongly remaining on the register by any error or defect, to apply to the Appellate Board or the Register to pass appropriate orders. Sub-clause (4) empowers both the Registrar and the Appellate Board to, suo moto, after giving notice to the parties concerned and hearing them, pass appropriate orders cancelling, varying or rectifying the register.

Clause 28.—This clause empowers the Registrar to carry out any correction on the register and make such consequential amendments or alteration in the certificate of registration.

Clause 29.—This clause provides that the registered proprietor of a geographical indication may apply to the Registrar for alteration of the registered geographical indication not substantially affecting the identity thereof. For example, if "Darjeeling Tea" is registered as geographical indication in English, a subsequent request may be made to depict the said registered indication in Devanagri (Hindi) script according to the procedure prescribed under this clause.

Clause 30.—This clause prohibits the Registrar normally from making any amendment of the register by adding any goods or classes of goods in respect of which a geographical indication is registered except as is provided in the proviso to sub-clause (1) of that clause and after complying with the procedure prescribed by rules under sub-clause (2).

Clause 31.—This clause provides for an appeal by any person aggrieved by an order or decision of the Registrar of geographical indications to the Appellate Board.

Clause 32.—This clause bars the jurisdiction of any court or authority to exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-clause (1) of clause 31.

Clause 33.—This clause provides that certain provisions relating to the Appellate Board mentioned in the proposed Trade Marks Act, 1999 as enumerated therein shall apply to the Appellate Board in the discharge of its functions under this Act.

Clause 34.—This clause deals with the procedure for processing an application for rectification, etc., before the Appellate Board.

Clause 35.—This clause provides that the Registrar shall have a right to appear and be heard before the Applellate Board where the relief sought includes alteration and rectification of the register or in which any question relating to the practice of the Geographical Indications Registry is involved. Paragraph (b) of sub-clause (1) provides for the appearance of the Registrar before the Appellate Board in certain circumstances. Sub-clause (2) empowers the Registrar to submit a statement in writing to the Appellate Board, in lieu of appearance, in matters relating to an issue or the grounds of any decision given by him or the practice of the Registry or of other matter relevant to the issue and within his knowledge and such statement shall be evidence in the proceeding.

Clause 36.—This clause deals with costs of the Registrar in proceedings before the Appellate Board. The cost of the Registrar shall be at the discretion of the Appellate Board. However, the Registrar shall not be ordered to pay the cost of any parties.

Clause 37.—This clause elaborates the meaning of applying a geographical indication to the goods. This would include the applying of a geographical indication to the goods themselves or to any package in or with which the goods are sold or exposed for sale or a person who has in his possession for sale, trade or manufacture of such goods or uses a geographical indication which is reasonably likely to lead to a connection between the goods with that geographical indication and would include the use of a geographical indication in any sign, advertisement, invoice, price list or other business paper.

Clause 38.—This clause lays down as to what amounts to falsifying or falsely applying a geographical indication. In particular, sub-clause (3) mentions that any geographical indication falsified under sub-clause (1) or sub-clause (2) shall be referred to as a false geographical indication. Sub-clause (4) provides that in any prosecution for falsifying geographical indication or falsely applying a geographical indication to goods, the burden of proving the assent of the proprietor shall lie on the accused.

Clause 39.—This clause lays down the penalty for falsifying or falsely applying geographical indication to goods. It provides for imprisonment of not less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend up to two lakh rupees. However, the court may for adequate and special reasons to be mentioned in the judgement award a punishment lesser than the minimum punishment.

Clause 40.—This clause lays down similar penalities as mentioned in clause 39 for selling goods to which a false geographical indication has been applied.

Clause 41.—This clause provides for enhanced penalty for second or subsequent conviction. The term of imprisonment in such cases shall not be less than one year but it may extend up to three years and fine of not less than one lakh rupees which may extend up to two lakh rupees. Here also discretion is vested with the courts to impose a lesser punishment than the minimum punishment after recording in the judgment adequate and special reasons for awarding such lesser punishment. Further, no cognizance would be taken of any conviction made before the commencement of this Act.

Clause 42.—This clause makes falsely representing a geographical indication as registered as an offence and lays down its penalty. The punishment for the offence is imprisonment of three years or with fine or with both.

Clause 43.—Under this clause, the use of any words which would reasonably lead to the belief that a person's place of business is officially connected with the Geographical Indications Registry is made as a punishable offence with imprisonment which may extend to two years or with fine or with both.

Clause 44.—This clause contains provisions for similar penalties as mentioned in clause 43 for falsification of entries in the Register of Geographical Indications.

Clause 45.—This clause specifically provides that in case where an alleged offence relates to a registered geographical indication and the act, or omission is permitted under the proposed legislation or where the alleged offence relates to a registered geographical indication and the act or omission is permitted under any other law for the time being in force, the provisions of clauses 39, 40 and 41 shall not be applicable. It is in the nature of defence available to an accused.

Clause 46.—This clause empowers the court to direct the forfeiture to Government of all the goods and things by means of or in relation to which certain offences mentioned therein have been committed. The court may either order for the forfeited goods to be destroyed or otherwise disposed of. Where an appeal against conviction lies, the appeal will lie against the forfeiture.

Clause 47.—This clause provides for exemption of certain persons employed in the ordinary course of business who are accused of an offence under section 39, from liability if they can prove their innocence in the circumstances mentioned in that section and would be acquitted accordingly.

Clause 48.—This clause provides for the procedure where invalidity of registration is pleaded by the accused and makes provision for stay of proceedings in certain circumstances. If the court is satisfied with the defence of invalidity of the registration, it may adjourn the proceedings for three months to enable an application for rectification of the register to be filed before the Appellate Board. If the accused proves that he has made such application, further proceedings shall stand stayed till the disposal of the application for rectification. On the other hand, if within the period allowed by the court, the accused fails to apply for rectification before the Appellate Board, the court will proceed with the case as if the registration is valid. Sub-clause (2) provides that where an application for rectification is pending before the institution of the criminal proceedings, the court shall stay the proceedings in the prosecution pending the outcome of the rectification application and determine the charge in conformity thereof to the extend that the complaint relies on the registration of his geographical indication.

Clause 49.—This clause contains for offences by companies. It seeks to provide that where a person committing the offence is a company, the company as well as every person responsible in the company for the conduct of its business will be liable. Where a person accused proves that the offence was committed without his knowledge, he will not be liable. However, where it is proved that an offence has been committed with the consent or connivance or is attributable to the neglect of any Director, Manager, Secretary or any other officer of the company, he shall be deemed to be guilty of the offence.

Clause 50.—This clause provides that no court shall take cognizance of an offence under clause 42 or clause 43 or clause 44 except on a complaint in writing made by the Registrar or any officer authorized by him. However, under clause 42(1)(b) a court shall take cognizance of an offence on the basis of certificate issued by the Registrar to the effect that a registered geographical indication has been represented as registered in respect of any goods, for which it has not, in fact, been registered. Sub-clause (2) provides that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try an offence under this Act. Sub-clause (3) provides that an offence under clause 39 or clause 40 or clause 41 shall be cognizable. Sub-clause (4) provide that a police officer not below the rank of Deputy Superintendent of Police or equivalent, may, if he is satisfied that any offence referred to in sub-clause (3) has been committed or is likely to be committed, search and seize without warrant the goods, die, block, machine, parts, plates or other instruments or things involved in the commission of offence, and wherever found, shall be produced before the Magistrate at the earliest. However, a Police Officer before making any such search or seizure shall obtain the opinion of the Registrar on the facts involved in the offence relating to the geographical indication and shall abide by such opinion. Sub-clause (5) enables a person having an interest in any article seized to file an application to the Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, for restoration of such article seized under sub-clause (4).

Clause 51.—This clause empowers the court to order payment of reasonable costs by the accused to the complainant or by the complainant to the accused, having regard to all the circumstances of the case and conduct of the parties. Further, the costs so awarded could be recovered as if they were a fine.

Clause 52.—This clause seeks to lay down a period of limitation for commencement of prosecution for an offence under the Act. It provides that no prosecution for an offence under this Act shall be commenced after the expiry of three years following the commission of the offence or two years after the discovery thereof by the prosecutor, whichever happens first.

- Clause 53.—This clause provides that any officer of the Government who is duty bound to enforce the provisions of Chapter VIII of the Bill shall not be compelled in any court to disclose the source of information of the commission of any offence under this Act.
- Clause 54.—This clause provides that any person in India abetting the commission of any offence which, if committed in India should be an offence, shall be tried for such abetment and shall be punished.
- Clause 55.—This clause seeks to protect anything done in good faith or intended to be done by any person under this Act.
- Clause 56.—This clause states that every person appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.
- Clause 57.—This clause deals with the circumstances in which stay of infringement proceedings can be ordered. It also provides that a stay of a suit for infringement of a geographical indication shall not preclude the court from making an interlocutory order during the period of stay.
- Clause 58.—This clause provides that in certain cases specified therein, the application for rectification of register should be made by the Appellate Board.
- Clause 59.—This clause provides that where a geographical has been applied to the goods on sale or in contract for sale of goods, there is an implied warranty that the geographical indication is a genuine geographical indication and not falsely applied.
- Clause 60.—This clause seeks to empower the Registrar with the powers of a civil court, including award of reasonable costs, subject to the rules to be made in this behalf. It is specifically provided that the Registrar shall have the power to review his own decision.
- Clause 61.—This clause provides that where the Registrar exercises any discretionary power vested in him adverse to an applicant, such person should be given an opportunity of being heard.
- Clause 62.—This clause lays down the method of giving evidence before the Registrar. It says that evidence before the Registrar should be normally in the form of affidavit only and in addition to or in lieu thereof, he may take oral evidence.
- Clause 63.—This clause provides that in case of death of a party to a proceeding during the course of the proceeding, the Registrar on proof to his satsfaction may allow substitution of successor of the party or may allow the proceeding to continue with the surviving parties.
- Clause 64.—This clause empowers the Registrar to extend the time for doing of any act (not for the time being expressly provided in this Bill) subject to conditions.
- Clause 65.—This clause provides for the abandonment of an application by reason of default of the applicant. If the Registrar is of the opinion that the applicant has defaulted in prosecution of his application, he may by notice require the applicant to remedy the defect within a specified time after giving him an opportunity of being heard. He may treat the application as abandoned unless the default is remedied within the time specified by him.
- Clause 66.—This clause provides that a suit for the infringement of a geographical indication shall be instituted only before a district court. It is proposed that the term "district court having jurisdiction" would include a District Court within the local limits of whose jurisdiction, the person or one of the persons instituting the suit or proceeding actually and voluntarily resides or carries on business or personally works for gain.

Clause 67.—This clause provides for relief in a suit for infringement or of passing off. Sub-clause (2) provides that an injunction order may include an ex parte injunction or any interlocutory order including discovery of document, preserving of infringing goods, restraining the defendant from disposing of or dealing with his assets adversely affecting the plaintiffs ability to recover damages or other pecuniary remedies which may be finally awarded by court. Sub-clause (3) lays down the circumstances in which the court shall not grant relief by way of damages (other than nominal damages) or an account of profits.

Clause 68.—This clause provides that in every proceeding under Chapter VI or under section 31 authorised user of a geographical indication has to be impleaded.

Clause 69.—This clause provides that a certified copy of any entry in the register or any document mentioned in sub-clause (1) of clause 77 and sealed with the seal of Geographical Indications Registry shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original. Sub-clause (2) provides that a certificate issued by the Registrar as to any entry, matter or thing, he is authorized to do shall be prima facie evidence of the entry having been made and of the contents thereof.

Clause 70.—This clause provides that the Registrar and other officers shall not be compelled to produce the register or any other document in his custody in any legal proceedings, the content of which can be proved by the production of a certified copy issued under this Act, or to appear as a witness to prove the matters therein recorded, unless ordered by the court for special reasons.

Clause 71.—This clause empowers the Central Government by notification to require goods of any class specified in the notification which are made or produced outside India and imported into India to apply an indication of the country or place in which such goods are made or produced with the name and address of the manufacturer. However, no such notification shall be issued unless a substantial segment of interested dealers, manufacturers or producers make an application to the Central Government to that effect and the Government is convinced that it is necessary in public interest to issue such a notification. However, such a notification would not apply to goods if the Commissioner of Customs is satisfied that they are intended for re-export or transhipment in or transit through India.

Clause 72.—This clause empowers the Appellate Board to grant a certificate of validity of a registered geographical indication or the authorized user in any legal proceedings relating to rectification of the register, and if, in any subsequent legal proceedings as to its validity comes up the said registered proprietor or the authorized user, as the case may be, will be entitled to recover the full cost charges and expenses as between a legal practitioner and his client.

Clause 73.—This clause seeks to protect the persons against groundless threats of infringement by giving them an opportunity to bring a suit against the person making such threats and obtain a declaration that the threats are unjustifiable and an injunction against the continuance of the threats and recovery of damages.

Clause 74.—This clause deals with address for service for the purpose of this legislation. An address for service stated in an application or notice of opposition shall be deemed to be the address of the applicant or opponent, as the case may be.

Clause 75.—This clause states that in any proceeding relating to geographical indications before the tribunal, the Registrar or the Appellate Board shall admit evidences of the usages of the trade concerned any relevant geographical indication legitimately used by other persons.

Clause 76.—This clause provides for the persons who can appear before the Registrar and includes persons registered as Geographical Indications Agent under the Act.

Clause 77.—This clause provides for the maintenance of various types of indexes by the Registrar under this Act.

Clause 78.—This clause provides details of documents which are open to public inspection. The Bill provides for the maintenance of the register on a computer or in any other electronic form and an inspection of a computer print of the relevant entry to be deemed to be inspection of the concerned document.

Clause 79.—This clause provides that the Central Government shall place before both the Houses of Parliament once a year a report regarding the execution by or under the Registrar of this Act.

Clause 80.—This clause provides for prescribing fees and surcharges payable for various acts under this Act.

Clause 81.—This clause provides for savings in respect of certain matters relating to Chapter VIII.

Clause 82.—This clause provides that no document declaring or purporting to declare any title of a person to a geographical indication other than a registered geographical indication shall be registered under the Registration Act, 1908.

Clause 83.—This clause provides that the provisions of this Act shall be binding on the Government.

Clause 84.—This clause provides for the declaration of any country, or group of countries or union of countries or Inter-Government Organisations to be a convention country by notification by the Central Government for the fulfilment of a treaty, convention or arrangement and includes provisions relating to applications for registration from citizens of convention countries.

Clause 85.—This clause contains provisions as to reciprocity. If any country or group of countries or union of countries or Inter-Governmental Organisations does not accord to citizens of India the same rights as to registration and protection of a geographical indication to its own nationals, no national of that country or country which is a member or group of countries or union of countries or Inter-Governmental Organisation, as the case may be, is entitled to apply for the registration of a geographical indication.

Clause 86.—This clause provides that the Central Government be empowered to remove any difficulties which may arise in giving effect to the provisions of this Act, by order published in the Official Gazette, if however, it is not inconsistent with the provisions of this Act and such order shall not be issued after five years from the commencement of this Act. Every such order made under this clause shall, as soon as may be after it is made, be laid before each House of Parliament.

Clause 87.—This clause empowers the Central Government by notification in the Official Gazette and subject to the condition of previous publication to make rules to carry out the provisions of this Bill, when enacted. Sub-clause (2) enumerates the various matters in respect of which rules may be made. Sub-clause (3) seeks to provide that every rule made under the proposed Act shall be laid as soon as after it is made before each House of Parliament.

FINANCIAL MEMORANDUM

In this Bill, provision has been made for providing registration and better protection of geographical indications of goods in India. The term "geographical indication", refers to any indication which defines the goods as originating in the territory of a country or a region or a locality in that territory, and where a given quality, reputation or other characteristics of the goods are essentially attributable to their geographical origin. It is expected that in the first year of the administration of the proposed Legislation, about 1200 applications will be filed for the registration of geographical indications. A Geographical Indications Registry would be entrusted with the responsibility of administering the Geographical Indications of Goods (Registration and Protection) Bill, 1999. Suitable manpower and infrastructure support to handle work relating to filing of applications, registration and search examination requests would be required. This will include creation of the posts of a Senior Joint Registrar, a Joint Registrar/Deputy Registrar, Assistant, Registrar, Senior Examiner, Stenographer Grade 'D', Lower Division Clerk, Data Entry Operator and Daftry/Peon to start with. Subsequently, depending upon the workload the same manpower structure would be extended to branches. For this, an estimated expenditure of Rs. 74 lakhs per annum towards salary and allowances and Rs. 50 lakhs for miscellaneous expenses (stationery, maintenance, training, office expenses, purchase of books, etc.,) as recurring expenditure and Rs. 125 lakhs as non-recurring expenditure towards infrastructure and other facilities such as furniture, telecommunications, software development, PCs, xerox machines, etc., is anticipated.

- 2. The Bill also provides for establishment of an Appellate Board for expeditious disposal of appeals against the decisions of the Registrar and for development of sound precedents and practices in this specialized branch of law. The Intellectual Property Appellate Board proposed to be set up for disposal of appeals on the decisions of the Registrar of Trade Marks will also handle appeals in regard to Geographical Indications cases.
- 3. Implementation of the provisions in clauses 3, 5, 6, 13, 77 and 78 of the Bill will involve expenditure from the Consolidated Fund of India.
- 4. The Bill provides for payment of fees in respect of application and registration and other matters under the Act.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 8 of the Bill empowers the Registrar to classify goods in accordance with the international classification of goods for the purpose of registration of geographical indications.

- 2. Clause 87 of the Bill empowers the Central Government to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of that clause enumerates the matter with respect to which the rules may be made under this clause. These matters relate, inter alia, to the matters to be included in the Register of Geographical Indications and the safeguards to be observed in the maintenance of such register in computer floppies or diskettes or in any other electronic form; the form and manner in which an application for registration of a geographical indication may be made; the manner in which the application for geographical indication shall be examined; the manner of publication of advertisement of accepted applications for registration of geographical indications; the manner in which the fee may accompany such an application; the manner of giving notice of opposition; the manner of sending counter statement and the manner of submission of evidence and the time thereof; the form of certificate of registration; the manner of applying for registration as an authorized user; the manner of making an application for renewal; the manner of making an application for rectification; the manner of making an application for correction of the Register; the manner of making an alteration of registered geographical indications; the form and manner of making appeals to the Appellate Board; the form in which any application or an application for rectification shall be made before the Appellate Board; the manner of making an application for review; the time within which an application is to be made to the Registrar under the exercise of discretionary powers; the manner of making application for extension of time; the manner of authorizing any person to act and the manner of registration of geographical indications and the fee and surcharge payable for applications and registrations. The power to make rules is, however, subject to the condition of the rules being made after previous publication. Every rule made by the Central Government under Clause 87 is required to be laid before Parliament.
- 3. The aforesaid matters relate to procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

R. C. TRIPATHI,
Secretary-General,